



# California Fair Political Practices Commission

June 15, 1987

Jonathan Rothman  
Assistant Attorney and Staff  
Counsel, FCPC  
Legal Department  
City of Berkeley  
2180 Milvia Street  
Berkeley, CA 94704

Re: Your Request for Advice  
Our File No. I-87-117

Dear Mr. Rothman:

You have requested advice concerning the campaign disclosure provisions of the Political Reform Act.<sup>1/</sup>

## QUESTIONS

1. Has an in-kind contribution been received by the candidates in the following situation: A committee produces and distributes campaign literature in the form of handouts supporting a number of candidates and ballot measures. The literature is not produced at the behest of any of the candidates. Election day morning the candidates are contacted by the committee which produced the handouts and offered a supply of the handouts. The candidates accept and distribute the handouts to the voters in their respective jurisdictions.

2. What method should be used to determine the fair market value of the campaign literature received in such a situation?

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<sup>1/</sup>Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

We are unable to provide advice concerning past conduct, unless the advice is requested by a person who files reports under the Act. (Regulation 18239(c)(4)(A).) However, you have indicated that you are requesting guidelines which may be applied to future situations. Therefore, we are providing informal assistance pursuant to Regulation 18239(c) (copy enclosed).

### CONCLUSIONS

1. In the situation described, the candidates who received the campaign literature have received "in-kind" contributions.

2. We suggest the following method for determining the value of the in-kind contributions received by the candidates:

(1) Divide the total cost of producing the handouts by the number produced.

(2) Multiply that figure by the number of handouts received by the candidate.

(3) Divide that figure by the number of candidates and measures endorsed on the handout.

### ANALYSIS

The term "contribution" is defined in Section 82015 which provides, in relevant part:

...contribution includes any transfer of anything of value received by a committee from another committee, unless full and adequate consideration is received.

The term "contribution" is further defined in Regulation 18215 which provides, in relevant part:

(a) A contribution is any monetary or nonmonetary payment made for political purposes for which full and adequate consideration is not made to the donor.

Section 82025.5 provides that:

...Whenever the amount of goods, services, facilities, or anything of value other than money is required to be reported under this title, the amount reported shall be the fair market value...

Generally, the fair market value is determined by whatever it would cost the recipient candidate or committee to purchase the goods or services. (See page 91 of the enclosed "Information Manual on Campaign Disclosure Provisions of the Political Reform Act for an example of determining fair market value.)

The formula provided above for determining the fair market value is based on the facts outlined in your letter. Staff evaluation of fair market value is determined on a case by case basis.

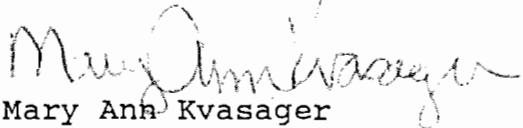
Jonathan Rothman  
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If you have any additional questions concerning this matter,  
please do not hesitate to contact me at (916) 322-5662.

Sincerely,

Diane M. Griffiths  
General Counsel

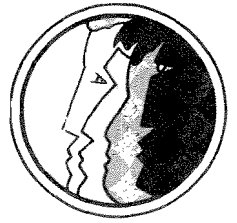
By:

  
Mary Ann Kvasager  
Political Reform Consultant

DMG:MAK:kmt  
Enclosures



# City of Berkeley



Legal Department  
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Civic Center Building  
2180 Milvia Street  
Berkeley, California 94704

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(415) 644-6380  
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April 13, 1987

Ms. Mary Anne Reager  
Technical Assistance and Analysis Division  
Fair Political Practices Commission  
428 J Street, Suite 800  
P.O. Box 807  
Sacramento, California 95804

Dear Mary Anne:

This letter is a follow-up to our recent telephone conversation, in which you provided me with an answer to a specific question raised as a result of activities which took place during the November 4, 1986 election in the City of Berkeley. You indicated a willingness on the Commission's part to provide such a response in writing if so requested. Please consider this letter such a request.

As you may recall, I presented the following facts and question. A political committee is formed during the ten-day period immediately prior to the November 4 election. The sole activity of this committee appears to be the publication, for distribution on election day morning, of a doorhanger which contained on the doorhanger, seventeen (17) were for state or county candidates and measures, and twenty-five (25) were for local candidates and measures. It appears that no candidates, nor committees supporting positions or measures, endorsed on the doorhanger were in any manner involved in encouraging, soliciting, or assisting in the planning and publication of the political committee's doorhanger.

Some candidates, however, were involved in the distribution of the doorhanger on election day morning. These candidates, perhaps no more than a small number of the endorsed local candidates, were apparently contacted after the doorhangers had been printed and expressed a willingness to receive those doorhangers with their specific endorsements on them, for purposes of distribution on election day morning. Many of the other candidates endorsed on the doorhanger expressed no advance knowledge of the publications, indicating awareness of the doorhangers only on election day morning.

My question to you was whether, with respect to the candidates who were endorsed on the doorhanger who participated in the distribution of the materials on election day morning, their receipt for distribution constituted an "in-kind" contribution from the political committee to the candidate. This was contrasted with those candidates professing ignorance with respect to the doorhangers and who did not participate in the distribution of them on election day.

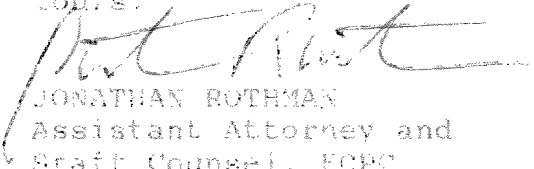
Your response to me was that the doorhangers given to the endorsed candidates for distribution on election day were, in fact, in-kind contributions from the political committee responsible for their publication to the candidates who received and distributed them. Your suggestion for determining the actual value of such an in-kind contribution was to take the total costs of the doorhangers, divide by the percentage of doorhangers received by a particular candidate, and further divide by the number of candidates and positions and measures appearing on the doorhanger. The resulting total would be the value of the in-kind contribution to the candidate receiving the doorhangers for election-day distribution.

I would appreciate receiving this information from you and the Commission in writing, as well as a brief explanation of the rationale behind such a conclusion. As it is typical for doorhangers to be published and distributed on election day morning in Berkeley elections, your assistance in resolving this matter is most appreciated so as to anticipate and resolve similar issues in the future.

Please contact me directly should you require any further information in the preparation of your written response.

Thank you again for your help in this matter, as well as your continued assistance in the numerous matters for which I consult you on a regular basis.

Courts.

  
JONATHAN ROTHMAN  
Assistant Attorney and  
Staff Counsel, ECPC

JR:ca



# California Fair Political Practices Commission

April 17, 1987

Jonathan Rothman  
Legal Department  
Martin Luther King, Jr.  
Civic Center Building  
2180 Milvia Street  
Berkeley, CA 94704

Re: 87-117

Dear Mr. Rothman:

Your letter requesting advice under the Political Reform Act was received on April 14, 1987 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5662.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Adm. Code Sec. 18329).) You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jeanne Pritchard", is written over the typed name.

Jeanne Pritchard  
Chief  
Technical Assistance and Analysis  
Division

JP:plh

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